

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Young Broadcasting - WKRN)
 Personal Property Account No. 095614) Davidson County
 Personal Property Account No. 125132)
 Tax year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The Metropolitan Board of Equalization has valued the subject property for tax purposes as follows:

<u>Account No.</u>	<u>Appraisal</u>	<u>Assessment</u>
095614	\$3,431,581	\$1,029,474
(441 Murfreesboro Road – office and studio)		

<u>Account No.</u>	<u>Appraisal</u>	<u>Assessment</u>
125132	\$2,094,110	\$ 628,233
(1406 Old Hickory Boulevard – transmission tower site)		

On October 1, 2007, the State Board of Equalization ("State Board") received appeals on behalf of the taxpayer.

The undersigned administrative judge conducted a hearing of this matter on December 20, 2007 in Nashville. The appellant, Young Broadcasting of Nashville, LLC ("WKRN"), was represented by Kirk Low, CPA, of Carr, Riggs and Ingram, LLC (Nashville). Staff appraiser Kenneth Vinson appeared on behalf of the Davidson County Assessor of Property ("Assessor").

Findings of Fact and Conclusions of Law

Background. The genesis of these appeals dates back to passage of the Telecommunications Act of 1996. In that legislation, the United States Congress mandated a nationwide transition from “analog” to “digital” television (DTV) broadcasting. Briefly, the Federal Communications Commission (FCC) was directed to issue DTV licenses to full-power commercial and public television stations on the condition that they transmit a digital signal by a date certain and cease all analog programming at the end of the transition period – currently, February 17, 2009.¹ This scheme was intended to achieve the consumer benefits of superior (albeit costlier) technology and free a portion of the broadcast spectrum for other uses. To boot, the federal government stands to reap substantial revenue from the auction of vacated airspace.

¹For the small minority of viewers who continue to rely solely on over-the-air (antenna) reception, Congress has authorized a subsidy toward the purchase of a digital converter box.

However, the required conversion also put stations like WKRN – an ABC network affiliate in the country's 30th largest television market – in the position of having to broadcast in both analog and digital modes for the duration of the transition period. It was not until March 1, 2007 that the manufacture of analog-only televisions was prohibited by FCC regulation; and retailers were permitted to sell their existing inventory of such sets thereafter. Hence, despite the impending demise of the format, the less expensive analog receivers still accounted for almost two-thirds of all television unit sales as recently as 2005.

As explained by its veteran chief engineer Gene Parker, WKRN had to install a second tower and transmitter at 1406 Old Hickory Boulevard in order to meet the station's obligation to broadcast a digital signal. All told, he testified, compliance with this government mandate entailed additional capital expenditures of some five million dollars. WKRN began to place DTV equipment in service in September of 2002. But according to Mr. Low's research, only about 25% of the televisions in the United States as of December 31, 2006 were digital sets. Exhibits 4 and 5.

WKRN previously appealed the valuation of the tangible personal property used (or held for use) in the operation of the station to the State Board in tax year 2001. In that case, Mr. Low sought a "non-standard" valuation of WKRN's **analog** broadcasting equipment on the ground that it would become virtually worthless after what was then the FCC's "target date" for the cessation of analog programming (December 31, 2006). The parties ultimately reached a settlement that involved the application of accelerated rates of depreciation for such equipment.² The AGREED FINAL ORDER, a copy of which is appended hereto, stated (in relevant part) that:

As to **digital** tangible personal property assets, and all other tangible personal property assets, owned or held for use by WKRN for ad valorem tax reporting purposes for tax year 2001, **the parties agree that the standard depreciation methodology (the State's standard rates) are reasonable and best estimate the fair market value, as defined by Tennessee Code Annotated section 67-5-601, of said assets.**³ [Emphasis added.]

Alas, that was then and this is now.

Contentions of the Parties. In this return engagement, Mr. Low contends that WKRN's digital broadcasting equipment also suffers from a huge amount of obsolescence not accounted for in the standard group depreciation tables. He attributed this alleged loss in value to the fact that "[g]overnment actions have required an entire for-profit industry to purchase and operate

²The Assessor apparently accepted the terms of this settlement in the valuation of the subject property for subsequent tax years, though the depreciation rates were revised in light of the extension of the deadline for shutoff of the analog signal from December 31, 2006 to February 17, 2009.

³Curiously, on page 7 of his Statement of Taxpayer's Position in the instant case, Mr. Low asserts that "[d]igital television equipment was not addressed in the settlement."

equipment alongside their existing equipment for seven years or more while serving the same customer base.” Statement of Taxpayer’s Position, pp. 15-16. Believing the conventional ways of measuring economic obsolescence to be inapplicable in this situation, he posited the following appraisal methodology with respect to the appellant’s DTV equipment:

The original cost and date of acquisition are known. By multiplying the cost times the standard “percent good” calculation for each group, the normal wear and tear and aging of the equipment is accounted for in the result. The result is then multiplied by a fraction using the estimated number of digital televisions as the numerator and the number of total televisions in the United States as the denominator.

Id. at p. 16.

Mr. Low called this hybrid (cost/income) approach, and the claimed additional (75%) depreciation allowance, “a unique solution to a unique problem.”

While acknowledging the probability of some degree of obsolescence, the Assessor’s representative doubted the accuracy of this attempted measurement of it. He also questioned the validity of Mr. Low’s allocation of just 25% of WKRN’s revenue (primarily from advertising) to DTV equipment. The sheer numbers of existing digital and analog televisions, Mr. Vinson pointed out, may not be indicative of the relative amounts of use that they actually receive.

Applicable Law. Tenn. Code Ann. section 67-5-601(a) provides (in relevant part) that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values....” Pursuant to Tenn. Code Ann. sections 67-5-901 et seq., the State Board has adopted a schedule for the reporting of tangible personal property. This schedule incorporates the statutory rates of allowable depreciation for the various categories of property listed in Tenn. Code Ann. section 67-5-903(f). State Board Rule 0600-5-.06(1) establishes a presumption that the fair market value of commercial and industrial tangible personal property other than raw materials, supplies, and scrap is “the original cost to the taxpayer less straight line depreciation, or the residual value, whichever is greater.” The presumption is rebuttable (by either the taxpayer or the assessor) upon the presentation of sufficient evidence to support a “non-standard” valuation. State Board Rule 0600-5-.07.

As the party seeking to change the present valuations of the property in question, WKRN has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Analysis. Implicit in Mr. Low’s analysis is the assumption that the standard depreciation tables established in Tenn. Code Ann. section 67-5-903(f) only capture normal losses in value from *physical deterioration*. Yet, presumably, the legislature which adopted those tables was well aware that:

The useful life (of machinery and equipment) can also be affected by technological improvements, progress in the arts, reasonable foreseeable economic changes, shifting of business centers, prohibitory laws, and other causes. All these should be considered before a useful life expectancy for the machine is determined. [Footnote omitted.]

American Society of Appraisers, *Appraising Machinery and Equipment* (1989), p. 65.

Apparently mindful of this reality, the Assessment Appeals Commission inferred in a recent case that:

The standard value represented in the assessor's valuation of the subject property, reflects straight line depreciation that purportedly includes **all forms of depreciation**, and **deducting additional depreciation in the form of economic obsolescence may well be double counting**. [Emphasis added.]

Breed Technologies (Blount County, Tax Years 2002-2003, Final Decision and Order, June 13, 2006), p. 2.

Moreover, in an appraisal of property for *ad valorem* tax purposes, it is axiomatic that:

...[D]epreciation in the cost approach is to be deducted **either from reproduction cost or replacement cost new**, and thus the appraiser is required to initially determine one or the other of these costs before deducting depreciation. [Emphasis added.]

Ibid.

Instead, the taxpayer's agent has resorted to an *accounting* concept of depreciation in which *original cost* is the starting point. See International Association of Assessing Officers, *Property Assessment Valuation* (2nd ed. 1996), p. 370. While recognizing the practical difficulty of estimating the *reproduction* or *replacement cost* of property for which there may be a very limited market, the administrative judge is loath to accept the drastically lower non-standard values propounded by the appellant without any such evidence.

The administrative judge also shares Mr. Vinson's skepticism as to whether the ratio of digital to total televisions is an accurate barometer of their actual usage. By January 1, 2007, the technologically inferior analog sets had likely been relegated to back-up duty or closet space in many American households. In any event, Mr. Low himself remarked in his written report that "separating the income between the digital and analog equipment is not possible." Statement of Taxpayer's Position, p. 13.

Finally, one cannot ignore the appellant's previous admission that "standard depreciation methodology" best reflected the market value of its digital equipment on January 1, 2001 – five years before the then-projected end of the transition period. It seems counterintuitive to suppose that such property would be afflicted by markedly greater obsolescence at a time much closer to the date (February 17, 2009) when this type of equipment will probably become *the* industry standard. Neither Mr. Parker nor Tennessee Association of Broadcasters president

Whit Adamson believed that another extension of the deadline for the termination of analog broadcasting was likely.

Order

It is, therefore, ORDERED that the decisions of the Metropolitan Board of Equalization be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 23rd day of January, 2008.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Kirk Low, CPA, Carr, Riggs and Ingram, LLC
Kenneth Vinson, Davidson County Assessor's Office

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In re: Young Broadcasting/ WKRN Television)
 Personalty Account No. 095614) Davidson County
 Tax Year 2001)

AGREED FINAL ORDER

Come the parties, as evidenced by the signatures of counsel and agent/representative below, and agree as follows:

Mr. Kirk Low, certified public accountant, is the duly appointed agent and representative of Young Broadcasting/ WKRN Television and is vested with the authority to enter into this Agreed Order on behalf of Young Broadcasting/ WKRN Television.

This matter was appealed to the State Board of Equalization on May 24, 2002 by the Metropolitan Nashville Property Assessor pursuant to Tennessee Code Annotated § 67-5-1501 *et seq.* from decision of the Metropolitan Board of Equalization for Davidson County rendered on March 27, 2002. Young Broadcasting/ WKRN Television filed a counter-claim in this matter on May 8, 2003. This Agreed Final Order constitutes an informal settlement pursuant to Tennessee Code Annotated § 4-5-105 of all claims pending before the State Board of Equalization in this matter. The parties agree that non-standard valuation as authorized by Rules of the Tennessee State Board of Equalization Chapter 0600-5-.07 is warranted. The parties agree that a clear and concise statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of this final order as

required pursuant to Rules of Tennessee Department of State Administrative Procedures Division Chapter 1360-4-1-.19 is rendered unnecessary.

This Agreed Final Order represents an agreement between the Metropolitan Nashville Property Assessor ("the Assessor") and WKRN-TV Station, % Young Broadcasting ("WKRN") concerning the valuation of tangible personal property assets owned or held for use by WKRN for ad valorem tax reporting purposes for tax year 2001.

The parties agree that analog tangible personal property assets are those that the only useful function of which is to broadcast an analog signal.

The parties agree that as a result of mandate by the Federal Communications Commission, it is anticipated that WKRN will surrender its license to use the radiofrequency spectrum it uses to broadcast an analog signal by December 31, 2006. Thus, the parties agree that December 31, 2006 is the date of obsolescence for analog tangible personal property assets.

As to analog tangible personal property assets, owned or held for use by WKRN for ad valorem tax reporting purposes for tax year 2001, the parties have agreed to a non-standard depreciation methodology. The parties agree that this non-standard depreciation methodology is reasonable and best estimates the fair market value, as defined by Tennessee Code Annotated § 67-5-601, of the subject assets taking into consideration the date of obsolescence mandated by the Federal Communications Commission.

As to digital tangible personal property assets, and all other tangible personal property assets, owned or held for use by WKRN for ad valorem tax reporting purposes for tax year 2001, the parties agree that the standard depreciation methodology (the

State's standard rates) are reasonable and best estimate the fair market value, as defined by Tennessee Code Annotated § 67-5-601, of said assets.

It is therefore **ORDERED** that the following values be adopted for tax year 2001:

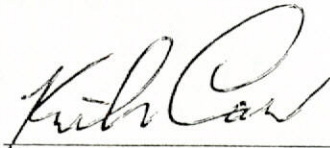
1. The appraised value of the tangible personal property assets owned or held for use by WKRN for tax year 2001 is \$4,116,602.00.
2. The assessed value of the tangible personal property assets owned or held for use by WKRN for tax year 2001 is \$1,234,981.00.

Entered this the 21st day of July, 2003.



PETE LOESCH
ADMINISTRATIVE JUDGE

APPROVED FOR ENTRY:



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